

## **REMARKS**

The present communication is in response to the Notice of Non-Compliant, mailed on November 9, 2009. Reconsideration is requested in view of the foregoing amendments and following remarks.

### **I. Amendments to the Specification**

The specification has been amended to reflect the current status of the parent application.

### **II. Amendments to the Claims**

Claim 15 was amended to correct Markush language.

Claims 15 and 16 were amended such that they no longer recite the term "BagCell" and to correct Markush language.

Claims 15, 25, and 29 were amended to provide correct antecedent basis and use proper articles.

Claims 15, 21, and 25, were amended to delete "fragment" language and to increase the required sequence identity to 95%.

Claim 16 was amended to depend from claim 15.

Claim 21 was amended to recite the language of all the claims from which it originally depended. Withdrawal of the rejection is requested.

The second Claim 33 has been amended to Claim 34, and is still indicated as being withdrawn.

Other minor amendments were made to correct typographical errors or improve punctuation.

No new matter has been added by way of the amendments.

### **III. Priority**

As amended, the claims now require at least 95% amino acid sequence identity to SEQ ID NO: 3, which is described in the subject Provisional Application. Applicants submit that the application is, therefore, entitled to the priority date of the Provisional Application.

### **IV. Objections to the Specification**

The specification was objected to for not including the current status of the parent application.

The specification has been amended to indicate the current status of the parent application. Withdrawal of the objection is requested.

The specification was objected to for describing Figures 1-3, which were allegedly not filed.

Applicants have reviewed their own physical file wrapper and the image file wrapper available on PAIR. In both cases, Figures 1-3 appear to have been properly filed as part of the specification. Thus Applicant's believe the Examiner has overlooked the Figures and issued the objection in error. Withdrawal of the objection is, therefore, requested. In any case, Applicants thank the Examiner for using the Figures in the provisional application for examination purposes, thereby expediting prosecution.

**V. Rejection under 35 U.S.C. § 101**

The Examiner makes reference to 35 U.S.C. § 101 and to the Figures. However, it is not clear whether any claims were actually rejected under 35 U.S.C. § 101. Applicants request clarification before they can address the rejection (if any).

**VI. Rejection under 35 U.S.C. § 112, second paragraph**

Claims 15, 16, 21, and 25-29 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite with respect to the term "BagCel."

Claims 15 and 16 were amended such that they no longer recite the term "BagCell." Claims 21 and 25-29 do not recite the term in their original form. Withdrawal of the rejection is requested.

Claims 15 and 25 were rejected for using improper Markush language.

The claims were amended to address the rejection.

Claim 16 was rejected as being confusing and indefinite in its language.

The claim was amended to address the rejection.

Claim 21 was rejected as being indefinite by depending from a non-elected invention.

Claim 21 was amended to recite the language of all the claims from which it originally depended. Withdrawal of the rejection is requested.

Claims 15, 16, 25,<sup>1</sup> and 29 were rejected for improper antecedent basis with respect to several terms/phrases.

Claims 15 and 25 were amended to address the rejections. The amendment to claim 25 addresses the rejection of claim 29. The amendments to claim 16 render the rejection moot. Withdrawal of all the rejections is requested.

Claim 26 and 29 were rejected for use of an incorrect article.

Claims 15 and 25 were amended to address the rejections.

**VII. Rejection under 35 U.S.C. § 112, first paragraph (enablement/written description)**

Claims 15, 16, 21, and 25-29 were rejected under U.S.C. § 112, first paragraph, as lacking enablement and written description for the full scope of the claims. These rejections are addressed together.

Claims 15, 21, and 25, from which the other rejected claims depend, have been amended to delete “fragment” language and to increase the required sequence identity to 95%. Applicants submit that this level of identity is very reasonable in view of the specification and well within the USPTO’s own Guideline relating to polypeptide and nucleic acid sequence.

Applicant further note that the “comprising” language in claims does not mean that the required activity can be supplied by a polypeptide other than that expressly recited in the claim. For example, claim 15 (as amended) specifies a “substantially purified cellulase polypeptide with the biological activity of a cellulase, comprising . . . .” It is clear that the substantially purified cellulase polypeptide that is defined by the claims has the cellulase activity. Therefore, Applicants disagree with the Examiner’s interpretation of the claim as stated in the rejection.

In view of the amendments, Applicants submit that the claims are reasonable in scope in view of the specification and satisfy the legal requirements for enablement and written description. Withdrawal of the rejections is requested.

**VIII. Rejection under 35 U.S.C. § 102**

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<sup>1</sup> The Examiner made reference to claim 16 twice. Applicants assume the rejection was intended to apply to claim 26.

Claims 15, 16, 21, and 25-28 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Schulein et al. (WO 99/02663).

Claims 15, 21, and 25, from which the other rejected claims depend, were amended to recite a polypeptide having at least 95% identity to SEQ ID NO: 3. The amendment presumably addresses the rejection. Withdrawal of the rejection is requested.

**IX. Rejection under 35 U.S.C. § 103**

Claim 29 was rejected under 35 U.S.C. § 103 as allegedly obvious over Schulein et al. (WO 99/02663) in view of what was well-known in the art.

The rejection appears to be moot in view of the foregoing amendments, since Schulein et al. do not teach or suggest the polypeptide underlying the claimed feed additive.

**X. Conclusion**

Applicants believe the present application is now fully in condition for allowance. Early notice to this effect is earnestly requested. If the Examiner has any questions regarding the present application he is encouraged to contact the undersigned.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 07-1048 (Docket No. GC792-2-US).

Respectfully submitted,

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Date

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